

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

NICHOLAS COOPER, *et al.*,  
Plaintiffs,  
v.  
AGRIFY CORPORATION,  
Defendant.

Cause No. C21-0061RSL-JRC

ORDER ADOPTING IN PART  
REPORT AND  
RECOMMENDATION

The Court, having reviewed the Report and Recommendation of the Honorable Richard Creatura, United States Chief Magistrate Judge, the parties' objections to the Report and Recommendation, and the remaining record, does hereby find and ORDER that the Report and Recommendation is ADOPTED in part. Specifically, the Court dismisses Claim 2 because the commissions, equity, and shares at issue had not accrued at the time of termination and were not, therefore, wrongfully withheld under Georgia's wage payment provision, O.C.G.A. § 34-7-2. The Court also dismisses claim 12, but grants leave to amend this claim. Any amended complaint must be filed within 21 days of this Order.

All other causes of action are referred back to Judge Creatura for all pretrial matters. The Court finds that a reference to the American Arbitration Association rules in the subject arbitration clause does not constitute clear and unmistakable evidence that the parties agreed to

1 arbitrate arbitrability where (a) there is no indication that the party objecting to delegation is  
2 sophisticated or otherwise could reasonably be presumed to understand the import of such a  
3 reference (*see Brennan v. Opus Bank*, 796 F.3d 1125, 1130-31 (9th Cir. 2015); *Money Mailer,*  
4 *LLC v. Brewer*, C15-1215RSL, 2016 WL 1393492, at \* 2 (W.D. Wash. Apr. 8, 2016)) and  
5 (b) mutual assent appears to be lacking under Washington law because the objecting party was  
6 not given an opportunity to read the rules at the time they purportedly agreed to them (*see*  
7 *Burnett v. Pagliacci Pizza, Inc.*, 196 Wn.2d 38, 49-51 (2020); *Hastings v. Unikrn, Inc.*, 12 Wn.  
8 App.2d 1072, 2020 WL 1640250, at \*7-8 (2020); *McMinimee v. Yakima Sch. Dist. No. 7*, No.  
9 1:18-CV-3073-TOR, 2021 WL 1559369, at \* 21 (E.D. Wash. Mar. 26, 2021)). The Court  
10 expresses no opinion on whether the Weinstein release is enforceable, finding only that the  
11 record lacks clear and unmistakable evidence of a mutual intent to arbitrate arbitrability.  
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15 A copy of this Order shall be sent to Judge Creatura.

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17 Dated this 27th day of July, 2021.

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19 Robert S. Lasnik  
20 United States District Judge  
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